

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 8**

**HUMILITY OF MARY HEALTH PARTNERS**

**Employer**

**and**

**Case No. 8-UC-350**

**TEAMSTERS LOCAL UNION NUMBER 377, ASSOCIATED WITH  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

**Petitioner**

**DECISION AND ORDER CLARIFYING UNIT**

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:<sup>1</sup>

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Petitioner is a labor organization within the meaning of the Act and claims to represent certain employees of the Employer.

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<sup>1</sup> The Petitioner and the Employer filed post-hearing briefs which have been duly considered.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and 2(6) of the Act.

The Employer is engaged in the operation of health care facilities, including acute care hospitals, in northeastern Ohio. The location involved in the instant matter is the St. Elizabeth Health Center in Youngstown, Ohio and its satellite facilities. The parties are signatory to a collective bargaining agreement effective from May 10, 1998 through May 9, 2001. The agreement covers a unit of support services employees employed at the Employer's facilities in Youngstown (St. Elizabeth), Austintown and Warren, Ohio. The agreement also applies to a unit of skilled maintenance employees.<sup>2</sup>

The Union's petition seeks to clarify the support services unit to include the recently created advanced surgery technician position and the skilled maintenance unit to include the position of telecommunication technician.<sup>3</sup>

The Employer, Humility of Mary Health Partners (HMHP) is the parent entity of Saint Elizabeth Health Center (SEHC). Similarly, Catholic Health Care Partners is the parent organization of both HMHP and Community Health Partners located in Lorain Ohio. Similar to HMHP, the Community Health Partners is an integrated delivery network comprised of an acute care facility and out patient facilities of long term care units located in Lorain, Ohio.

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<sup>2</sup> . The parties did not introduce the entire collective bargaining agreement into the record. Rather, the parties introduced as Board Exhibit 2 a document entitled "Bargaining Unit Recognition". From this document it appears as if St. Elizabeth Health Center is the signatory employer and that one collective bargaining agreement applies to both units.

<sup>3</sup> The parties stipulated that the position identified in the collective bargaining agreement as telephone technician since been renamed telecommunication technician.

Community Health and HMHP each own 50 percent of Humility of Mary Health Information System (HMIS). HMIS is responsible for providing all the information and support services for both entities.

By its petition, the Union seeks to clarify the existing skilled maintenance unit to specifically include the position of telecommunications technician since that position has historically been included in the unit and the employee occupying the position, Edward Chop, was included in the unit before being administratively assigned to HMIS. The Union contends that Chop performs the same unit work as his prior position. Additionally, the Union argues that HMHP and HMIS are a single employer for the purposes of bargaining. In this connection, it contends that HMIS is the computer services branch of HMHP.

The Union also seeks to include the advanced surgery technician in the support services unit. The Union contends that the employee who holds that position, Peter Vimmerstedt, previously held the unit position of laser safety coordinator and performs tasks similar to those of his prior position sufficient to warrant inclusion in the unit.

HMHP, contrary to the Union, seeks to exclude the telecommunications technician from the unit arguing that the position is part of HMIS, a separate and distinct legal entity from HMHP. Moreover, the Employer argues that neither the telecommunications technician or the advance surgery technician share a sufficient community of interest with the other employees to warrant inclusion in the units.

For the reasons set forth below, I find that the skilled maintenance unit should be clarified to include the telecommunications technician and the support services unit clarified to include the advanced surgery technician.

### **Telecommunications Technician**

Employee Edward Chop has previously performed the duties of the telecommunications technician and was included in the skilled maintenance bargaining unit. In June of 2000, HMIS created the non-bargaining telecommunications technician position for the purpose of coordinating telecommunication and data services between the HMHP and Community Health Partners facilities. As a result, the unit position was eliminated and removed from the supervision of HMHP and transferred to HMIS. The decision to remove this position from the bargaining unit was made by HMHP, HMIS, and SEHC personnel. This change was made to enable a more efficient and cost effective operation for telecommunications.

Chop was awarded the new position and began work on August 6, 2000. Chop retained his seniority and office located at SEHC. Chop, however, did receive a \$1.25 an hour wage increase.

The job description for both the bargaining and non-bargaining telecommunications technician position require the employee to assist in the construction, installation, and evaluation of all telecommunication related equipment and systems and perform preventive maintenance repairs, modification and overhauls related to such equipment. Additionally, the qualifications for both the bargaining and non-bargaining unit positions require an Associate Arts of Science degree in Electrical Engineering, knowledge of the PBX system and the ability to interpret blueprints, schematics, network diagrams and other technical specifications or graphs.

HMHP contends that the duties of the HMIS telecommunications technician changed substantially once HMHP decided to combine telecommunication with data

services. In connection with this plan, the non-bargaining unit position acquired additional responsibilities and training relating to data network systems, not performed by the bargaining unit position. It is undisputed that these new duties and training flow directly from the need to increase efficiency and improve technology. However, there is no change in the overall function of the telecommunications technician, which is to provide telecommunication information and support to HMHP and Community Health Partners.

In keeping with technological advances, the non-bargaining position also requires the telecommunications technician to perform work with other HMIS technicians who repair data equipment and maintain the data network. Because the job functions for the unit position are virtually identical to the non-unit position, the Board's decision in John P. Scripps Newspaper Corp., 329 NLRB No. 74 (1999) is germane to resolving this case. In Scripps, the Board reiterated the legal standard applicable to issues similar to those presented here. As stated in Scripps at sl. op. p. 6:

If the new employees perform job functions similar to those performed by unit employees, as defined in the unit description, we will presume that the new employees should be added to the unit, unless the unit functions they perform are merely incidental to their primary work functions or are otherwise an insignificant part of their work. Once the above standard has been met, the party seeking to exclude the employees has the burden to show that the new group is sufficiently dissimilar from the unit employees so that the existing unit, including the new group, is no longer appropriate.

In accordance with the principles discussed above, the HMIS telecommunications technician is presumptively included in the existing unit. Thus, the burden shifts to the Employer to establish that the position is sufficiently dissimilar from the unit position to warrant exclusion.

Applying traditional community-of-interest factors, such as separate supervision, different terms and conditions of employment, different work situs, and lack of interchange, I find that the Employer has not met this burden.

In Bay Shipbuilding Corp., 263 NLRB 1133 (1982), the Board considered a situation strikingly similar to the instant case involving the functions of loftsmen in a production and maintenance unit. In Bay Shipbuilding Corp., the employer decided to improve efficiency and accuracy of its inventory control system at its shipyard through technological advances. The employer established a new computerized lofting department and removed the employees from the bargaining unit who performed this work.

In Bay Shipbuilding Corp., the Board rejected the employer's attempt to justify the removal of a group of employees based solely on technological advances. In so doing the Board relied on several factors. First, the bargaining and non-bargaining employee positions required the same basic education in mathematics, geometry, and reading blueprints. Second, the function of both positions remained the same and the differences arose only in the specifics of how duties were performed. More importantly, every employee who was transferred to the computerized lofting position with the exception of one was a member of the bargaining unit.

Most of the factors relied on by the Board in Bay Shipbuilding Corp., are present here. In this regard, HMHP removed an employee from the bargaining unit while introducing new technology. However, the basic functions of the position remained the same.

The Employer argues in its post-hearing brief that community of interest factors, such as a different work situs, different wages, and lack of interchange, supports a finding that the position should be excluded as discussed below. I conclude that these factors do not rebut the presumption that the telecommunications position should be included in the existing unit.

Initially, the Employer contends that Chop's pay increase of \$1.25 an hour favors exclusion from the unit. However, a factor such as wages, which is solely within the control of the employer, is not sufficient to rebut the presumption of inclusion. Scripps, supra, 329 NLRB at sl. op. pg. 6. Reliance on such a factor would enable an employer to manipulate an exclusion of employees from the unit. Id..

The Employer next argues that Chop spends considerable time away from SEHC because HMIS provides services to other facilities associated with HMHP and Community Health Partners. Significantly, the Employer's own time records reveal that Chop has spent only 128 hours away from SEHC from August 10, 2000 through March 26, 2001. Although Kordupel testified that Chop spends 5-10 hours each week in his SEHC office, bargaining unit employee Johnson testified that he sees Chop at least 3-4 times a week performing the same work he has always done while in the unit position. The mere fact that Chop is assigned to perform some work away from SEHC is insufficient to rebut the presumption of inclusion.

Finally, the Employer contends that the HMHP and HMIS are separate corporations. A determination of whether two or more employers constitute a single employer within the meaning of the Act depends on the consideration of four criteria: (1) interrelation of operations; (2) common management; (3) centralized control of labor

relations and (4) common ownership or financial control. Electrical Workers IBEW Local 1264 v. Broadcast Service of Mobile, 380 U.S. 255 (1965). Of these criteria, the Board has stressed the first three are more critical than common ownership. The Board has placed considerable emphasis on whether control of labor relations is centralized. Blumenfeld Theatres Circuit, 240 NLRB 206 (1979).

It is undisputed that HMIS is owned by HMHP, the parent company of SEHC. The documentary evidence reveals that in September 1998, a Certificate of Merger was filed with the State of Ohio for the purpose of merging HMIS into the Employer, HMHP. The name of the Surviving Corporation was HM Shared Services. On March 2, 2001, an “Amended and Restated Articles of Incorporation” were filed with the State of Ohio resulting in the dissolution of HM Shared Services and HMIS regaining its corporate status.

With respect to common management, the HMHP organizational chart lists Charles Folkwein as the Vice-President and CIO of HMIS. On the same document Maureen Kordupel is listed as reporting to Folkwein but her title is “Director of Information Serv. HMHP.”<sup>4</sup> Molly Seal is the Senior Vice President of Human Resources and Organizational Development of the Employer, and the record indicates she has a “dotted line” relationship to Linda Harpster, the Human Resource Specialist, at HMIS. Portfirio Esparra, Jr. is the Director of Employee Relations and Employee Health at SEHC-HMHP.

Regarding centralized control of labor relations, record testimony reveals that Folkwein, Kordupel and Harpster, were all jointly involved in hiring Chop for the

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<sup>4</sup> The HMIS Organization Chart dated January 11, 2001 indicates that Kordupel is the Director of the “HMIS Site Team” at HMHP.



telecommunications position. Significantly, the record also reveals that Folkwein, Kordupel, Seal, Harpster, and Esparra jointly participated in the decision to transfer the telecommunication technician position out of the bargaining unit. In my view, this type of control outweighs the fact that HMIS has its own payroll, its own offices, Human Resource department and its own employee handbook.

The type of joint decision making regarding the removal of a unit position also establishes that there is clearly an interrelationship of operation between HMHP and HMIS. In addition, Kordupel and the telecommunication technician continue to provide many of the same services that were provided prior to removing the position from the bargaining unit.

On the basis of all of the above-noted factors, I find that the establishment of HMIS as a “separate entity” is merely a technical change in the corporate structure of one department of HMHP and that the HMHP, HMIS and SEHC are a single employer within the meaning of the Act. Allegheny Graphics, Inc., 320 NLRB, 1141, 1142-1143 (1996).

Accordingly, based on the foregoing and the record as a whole, I find that the Employer has failed to meet its burden of producing sufficient evidence to prove that the telecommunications position is so dissimilar from the unit position from which it emanated as to warrant its exclusion. Accordingly, I shall clarify the existing unit to include it.

#### **Advanced Surgery Technician**

Prior to obtaining the position of advanced surgery technician in April 2000, Peter Vimmerstedt worked in the bargaining unit position of Laser Safety Coordinator. The Laser Safety Coordinator was responsible for the maintenance of laser and video

equipment and maintaining the supplies used in laser procedures. Patricia Stedman, the Employer's Director of Surgical Services testified that Vimmerstedt spent approximately 65% of his time performing the above duties. Stedman testified that ten percent of Vimmerstedt's time was spent as a laser safety officer managing paper work associated with laser procedures. Approximately ten percent of his time was spent working as a surgical technician in the operating room, which included scrubbing and handing instruments to the physicians during surgery. The remaining fifteen percent of his time was spent trouble repairing equipment used during operating room procedures.

In April 2000, the Employer posted an opening for the position of Advanced Surgery Technician, a non bargaining position in the Center for Advanced Surgery. Like the telecommunications position, the qualifications and job description for the Advanced Surgery Center are quite similar to the bargaining unit position that preceded it. Specifically, the non-bargaining position retained the duties of the Laser Safety Coordinator, in addition to some new duties relating to more sophisticated equipment, procedures and educational programs.

As noted above, the duties of the advance surgery technician encompass the duties of the laser safety coordinator. However, several witnesses testified the laser safety coordinator duties have diminished considerably because of the relative cost of lasers compared to the even more advanced technology that is increasingly used in surgery. However, Vimmerstedt's overall function of educating and assisting physicians, nurses and technicians in the use and operation of technical equipment has not changed.

In accordance with the principles already mentioned, the advance surgery technician presumptively should be included in the existing unit . Thus, the Employer bears the burden of establishing that the position is sufficiently dissimilar to the unit position to warrant exclusion.

The Employer maintains that the laser safety coordinator position has diminished because of the high cost associated with lasers and the availability of new technology. Accordingly, the Employer subcontracts most of its laser work, and such procedures are performed by the Employer's employees only approximately two days a month. The Employer further argues that community of interest factors such as different supervision, time spent away from St. Elizabeth, the difference in duties and lack of interchange with the bargaining unit favor the exclusion of this position. I find, however, the evidence is insufficient to rebut the presumption that this position should be included in the existing unit.

While it is true that Vimmerstedt is no longer supervised by Stedman, this is simply because the laser coordinator position was transferred to a new department and given a different title with similar duties. Even so, Stedman was involved in the interviewing and selection of the advanced surgery technician.

The Employer's argument that Vimmerstedt spends 40 percent of his time at St. Joseph Health Center does not negate the fact that the majority of his time is spent at SEHC, in an office down the hall from where he worked in the bargaining unit position. Significantly, the laser safety coordinator was always supposed to provide technical support to other Employer facilities using laser equipment, including St. Joseph Health Center and the Surgical Center in Howland, Ohio.

Finally, the Employer argues that the advanced surgery technicians, unlike the laser coordinator position, requires extensive skills, on-the-job training, and continuing medical education credit. However, the fact that Vimmerstedt regularly receives additional training as additional equipment is added is not dispositive of the issue of whether advanced surgery technicians should be excluded in the unit. Instead, like the laser safety coordinator, Vimmerstedt is trained regarding the use of each new piece of technological equipment to provide technical support to physicians, nurses and surgical technicians. Simply put, even though lasers are being replaced by robotic arms and other new equipment, Vimmerstedt is still providing technical support as a resource person as he was in his prior position. Record testimony reveals that Vimmerstedt continues to interact with other employees regarding laser equipment, although to a lesser degree. I note that, as in Scripps, the advanced surgery technician position was filled by the same employee who performed similar duties in a bargaining unit position.

In United Technologies Corp., 287 NLRB 198 (1987), the Board considered a situation similar to the instant case. In United Technologies the employer eliminated a unit which had included expeditors whose primary function was to keep track of inventory and follow parts throughout the plant. The employer established a new method of inventory and production control which accomplished the same tasks through the use of computers. Thus, the employer replaced the expeditors with production control coordinators (PCCS) who reported to a different supervisor, spent much less time travelling through the plant and performed a significant amount of their duties on the computer. Additionally, the employer provided the (PCCS) with additional training in their new jobs on several different occasions. Despite the change in supervision and

duties, the Board held that the employer had “not met its burden of showing that the PCC position was so different from the expediter job as to justify its exclusion from the bargaining unit.” United Technologies Corp., 287 NLRB 198, 204 (1987).

Like the employers in Bay Shipbuilding Corp., Scripps, and United Technologies Corp., the Employer in the instant case has failed to provide sufficient evidence that the advanced surgery technician is so dissimilar from the functions of the unit position of laser safety coordinator so as to warrant the exclusion from the unit. The differences in the bargaining position and non-bargaining position flow directly from technological advances in surgery. Finally, the Board has noted the significant impact on employees of an employer’s decision to remove an employee from a bargaining unit when the new job classification encompasses unit work. United Technologies Corp., 287 NLRB 198, at 204.

Accordingly, based on the foregoing and the record as a whole, I find that the Employer has failed to meet its burden of producing sufficient evidence to prove that the advanced surgery technician position is so dissimilar from the unit positions to warrant its exclusion.

#### **ORDER CLARIFYING UNIT**

The collective-bargaining units are clarified to include the telecommunications position in the skilled maintenance unit and the advanced surgery technician position in the support services unit.

#### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board,

addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by May 29, 2001.

Dated at Cleveland, Ohio this 15<sup>th</sup> day of May, 2001.

/s/ Frederick J. Calatrello

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Frederick J. Calatrello  
Regional Director  
National Labor Relations Board  
Region 8

385-7533-2040